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UNITED STATES SENATOR • NEW MEXICO

Rules Committee Hearing Testimony As prepared for delivery

Mr. Chairman,

Thank you for holding this hearing. Filibuster reform is an issue that has received a great deal of attention recently.

Today's hearing, as well as future hearings, will allow us to take a rational and deliberative approach to reforming not just the filibuster, but other rules that are hampering this body.

Today is about looking at our past, but it also provides guidance for the future. Critics of reforming the filibuster argue that it will destroy the uniqueness of the Senate. They say it will turn the Senate into the House of Representatives.

But today we will hear that the filibuster rule has been amended over the years ... and this body not only survived the reforms, but was better for them.

We will hear from our witnesses about the creation of the cloture rule in 1917 ... and the history of its reforms over many decades. I'd like to focus on one part of that history.

In the 1940s and '50s, a civil rights debate was raging in the Senate. And a minority of senators opposed to the legislation were regularly using the filibuster as a weapon of obstruction. In 1953, a bipartisan group of senators decided they had had enough. Led by my predecessor ... New Mexico's Clinton Anderson ... they attempted to reform the filibuster.

Article I, section 5 of the Constitution states that "each House may determine the Rules of its Proceedings." As such, Anderson argued that any rule adopted by one Senate that prohibits a succeeding Senate from establishing its own rules is unconstitutional.

But this is precisely what Rule XXII does. Currently, we are operating under rules ... approved by a previous Senate ... that require an affirmative vote of two-thirds of senators to end a filibuster on any rules change.

Anderson's argument became known as the Constitutional Option.

On the first day of Congress in 1953, Anderson moved that the Senate immediately consider the adoption of rules for the Senate of the 83rd Congress.

His motion was tabled ... but he introduced it again at the beginning of the 85th Congress. In the course of that debate, Senator Hubert Humphrey presented a parliamentary inquiry to Vice-President Nixon, who was presiding over the Senate.

Nixon understood the inquiry to address the basic question: "Do the rules of the Senate continue from one Congress to another?"

Noting that there had never been a direct ruling on this question from the Chair, Nixon stated that, quote, "any provision of Senate rules adopted in a previous Congress which has the expressed or practical effect of denying the majority of the Senate in a new Congress the right to adopt the rules under which it desires to proceed is, in the opinion of the Chair, unconstitutional." End quote.

Despite Nixon's opinion, Anderson's motion again was tabled.

Anderson raised the Constitutional Option once more at the start of the 86th Congress, this time with the support of more than two dozen other Senators.

But to prevent Anderson's motion from receiving a vote, Majority Leader Johnson came forward with his own compromise.

He proposed changing Rule XXII to reduce the required vote for cloture to "two-thirds of the Senators present and voting."

As our witnesses will discuss, this was not the last change to the filibuster rule. Reform efforts have continued ... and occasionally succeeded ... since 1959.

The Constitutional Option has served as a catalyst for change.

As the junior senator from New Mexico, I have the honor of serving in Clinton Anderson's former seat. And I have the desire to continue his commitment to the Senate and his dedication to the principle that ... in each new Congress ... the Senate has the constitutional right to determine its own rules by a simple majority vote.

It is time again for reform.

There are many great traditions in this body that should be kept and respected, but stubbornly clinging to ineffective and unproductive procedures should not be one of them.

We should not limit our reform efforts to the filibuster, but look at all of the rules.

We can, and should, ensure that minority rights are protected and that the Senate remains a uniquely deliberative body.

But we must also ensure that it is a functional body, regardless of which party is in the majority.

Thank you again, Mr. Chairman.